

seems otherwise as to implied covenants, Anon. 1 Sid. 447, pl. 9.⁴¹ If the assignee breaks the covenant he may be charged, or the lessee, or his executors; but if an assignee assign over, and the second assignee break the covenant, the first assignee cannot be charged, but the second assignee that broke the covenant, or the lessee, or his executors, may, *per Hale* in *Boulton v. Canon*, Freem. 336. The lessor, however, is not bound to an election, but may sue both the lessee and the assignee at one and the same time, but execution shall only be against one of them, and if he take several executions, he who is last taken in execution shall have an *audita querela*, *Brett v. Cumberland supra*; and it may be remarked here, that, conversely, if both grantor and grantee of a reversion bring covenant against a lessee, a recovery by one is a bar to the other, *Beely v. Purry*, 3 Lev. 154; *Thursby v. Plant*, 1 Wms. Saund. 241 f. Where lessee for 40 years underlet to A. for 5 years, and afterwards made a lease to B. for 40 years, who covenanted to repair *durante termino prae*d. 40 *annorum*; the under-lessee refused to attorn; the Court said that the lessee for 40 years is bound to repair: for though his interest had not commenced in point of interest, yet it had in point of computation, and the covenant was to repair during the 40 years, *Lewyn v. Forth*, 1 Vent. 185; S. C. 3 Salk. 108.

Rights of assignee by act in law.—If a man demises or grants land to a woman for years, and the lessor covenants with the lessee to repair the houses during the term, the woman marries and dies, the husband shall have an action of covenant as well on the covenant in law on these words (demise or grant), as on the express covenant. The same law is of tenant by statute merchant, or staple, or *elegit*, of a term, and he to whom a lease for years is sold by force of an execution shall have an action of covenant in such case, as a thing annexed to the land, although they come to the term by act in law, *Spencer's case*, 5th Resolution; *Martin v. Martin*, 7 Md. 368, *acc.*; see *Dailey v. Grimes*, 27 Md. 440.

Rights of assignee of assignee.—It was resolved that the assignee of the assignee should have an action of covenant. So of the executors of the assignee of the assignee; so of the assignee of the executors or administrators of every assignee, for all are comprised within the words **353** *(*assignees*), for the same right which was in the testator or intestate shall go to his executors or administrators, *Spencer's case*, 7th Resolution. The general principle is that covenant lies against an executor in every case, though he be not named, unless it be such a covenant as is to be performed by the person of the testator, which the executor cannot, *Hyde v. Dean of Windsor*, Cro. Eliz. 552. And an executor is likewise liable as assignee in law of the term, *Stoddert v. Newman*, 7 H. & J. 251, (see *Schwenniski v. Glenn*, 4 Gill, 23), and as such, whether the estate will produce the rent or

⁴¹ A lessee is liable for rent either by express covenant or by privity of estate. In the former case he cannot terminate his liability by assigning over, though the lessor accept rent from the assignee, or consent to the assignment. But in the latter case the lessee's liability ceases if the lessor consents to the assignment; and such consent may be inferred by his accepting rent from the assignee, or by any other act recognizing the latter as tenant. *Consumers Co. v. Bixler*, 84 Md. 437.